

Part III - Administrative, Procedural, and Miscellaneous

Information Reporting of Payments Made in Settlement of Payment Card and Third Party Network Transactions

Notice 2009-19

PURPOSE

This notice invites public comments regarding guidance to be provided to payment settlement entities and other affected persons concerning new requirements with respect to the reporting of payments made in settlement of payment card and third party network transactions. The new reporting requirements are in section 6050W of the Internal Revenue Code (the Code), which was added by section 3091 of the Housing Assistance Tax Act of 2008, Div. C of Pub. L. No. 110-289, 122 Stat. 2653 (the Act). Section 6050W requires information returns to be made for each calendar year by merchant acquiring entities and third party settlement organizations with respect to payments made in settlement of payment card transactions and third party payment network transactions occurring in that calendar year. This requirement to make information returns applies to returns for calendar years beginning after December 31, 2010.

The Treasury Department and the Internal Revenue Service (the Service) intend to issue guidance on compliance with the new reporting requirements. To assist them in drafting guidance under the new provisions, they are requesting comments from all affected persons.

BACKGROUND

Under new section 6050W, any payment settlement entity making payment to a participating payee in settlement of reportable payment transactions must make a return for each calendar year to be filed with the Service, and furnish a statement to the participating payee, setting forth the gross amount of such reportable payment transactions, as well as the name, address, and taxpayer identification number (TIN) of the participating payees.

Section 6050W(c) provides that a “reportable payment transaction” means any payment card transaction and any third party network transaction. Section 6050W(b)(1) provides that a “payment settlement entity” means: (A) in the case of a payment card transaction, a merchant acquiring entity; and (B) in the case of a third party network transaction, a third party settlement organization. Section 6050W(d)(1)(A) provides that a “participating payee” means: (i) in the case of a payment card transaction, any person who accepts a payment card as payment; and (ii) in the case of a third party network transaction, any person who accepts payment from a third party settlement organization in settlement of such transaction. Section 6050W(d)(1)(C) provides that “person” includes any governmental unit (and any agency or instrumentality thereof). However, section 6050W(d)(1)(B) provides that a “participating payee” does not include any

person with a foreign address except as provided by the Secretary in regulations or other guidance.

With respect to reporting on payment card transactions, section 6050W(b)(2) provides that the term “merchant acquiring entity” means the bank or other organization with the contractual obligation to make payment to participating payees in settlement of payment card transactions. Section 6050W(c)(2) provides that a “payment card transaction” means any transaction in which a payment card is accepted as payment. Section 6050W(d)(2) defines “payment card” as any card that is issued pursuant to an agreement or arrangement that provides for: (A) one or more issuers of such cards; (B) a network of persons unrelated to each other, and to the issuer, who agree to accept such cards as payment; and (C) standards and mechanisms for settling the transactions between the merchant acquiring entities and the persons who agree to accept such cards as payment.

Section 6050W(c)(3) provides that the term “third party network transaction” means any transaction that is settled through a third party payment network. Section 6050W(d)(3) defines “third party payment network” as any agreement or arrangement that: (A) involves the establishment of accounts with a central organization by a substantial number of persons who (i) are unrelated to such organization, (ii) provide goods or services, and (iii) have agreed to settle transactions for the provision of such goods or services pursuant to such agreement or arrangement; (B) provides for standards and mechanisms for settling such transactions; and (C) guarantees persons providing goods or services pursuant to such agreement or arrangement that such

persons will be paid for providing such goods or services. In the case of a third party network transaction, section 6050W(b)(1)(B) provides that the payment settlement entity is the “third party settlement organization,” which is defined in section 6050W(b)(3) as the central organization that has the contractual obligation to make payment to participating payees of third party network transactions.

Section 6050W(d)(3) provides that a third party payment network does not include any agreement or arrangement that provides for the issuance of payment cards. In addition, section 6050W(e) provides that a third party settlement organization is required to report with respect to third party network transactions of any participating payee only if (1) the aggregate amount with respect to such third party network transactions for the year that would otherwise be reported exceeds \$20,000, and (2) the aggregate number of such transactions exceeds 200.

Additionally, section 6050W(b)(4)(A) imposes reporting requirements on intermediaries who receive payments from a payment settlement entity and distribute such payments to one or more participating payees. Under section 6050W(b)(4)(A), such intermediaries are treated (i) as participating payees with respect to the payment settlement entity, and (ii) as payment settlement entities with respect to the participating payees to whom the intermediary distributes payments. However, under section 6050W(b)(4)(B), if an electronic payment facilitator or other third party makes payments in settlement of reportable payment transactions on behalf of the payment settlement entity, the electronic payment facilitator or other third party must file the annual information return in lieu of the payment settlement entity.

The Act also amended section 3406(b)(3) to provide that reportable payment transactions subject to information reporting under section 6050W generally are subject to backup withholding requirements. In addition, the Act amended section 6724(d) by adding returns required by section 6050W to the definition of information returns for purposes of penalties for failure to comply with certain information reporting requirements.

Section 6050W(g) grants authority to the Secretary to issue guidance to implement the reporting requirement, including rules to prevent the reporting of the same transaction more than once. Section 6050W and the related amendment to section 6724(d) generally apply to returns for calendar years beginning after December 31, 2010. The amendments to the backup withholding requirements apply to amounts paid after December 31, 2011.

REQUEST FOR PUBLIC COMMENTS

The Treasury Department and the Service request comments on issues that should be addressed in guidance implementing the new requirements with respect to the reporting of payments made in settlement of payment card and third party network transactions. The Treasury Department and the Service request specific comments regarding:

1. Whether the Form 1099 series is appropriate for Section 6050W reporting and whether the time and manner of reporting to the Service should conform to existing practices for information reporting to the Service under other provisions of the Code;

2. Whether procedures for electronic reporting to payees, under section 6050W(f), should conform to existing procedures for electronic reporting to payees under other provisions of the Code;
3. What foreign entities, if any, should be included in the definition of “payment settlement entity”;
4. What persons with foreign addresses, if any, should be included in the definition of “participating payee”;
5. How to interpret the statutory definition and scope of “payment card”;
6. How to interpret the statutory definition and scope of “third party payment network”;
7. Whether the “gross amount” of the reportable payment transaction should be defined as “gross receipts or sales” or whether adjustments should be made for credits, cash equivalents, discount amounts, fees, refunded amounts, or other amounts;
8. How to administer the reporting requirements so as to prevent reporting of the same transaction more than once;
9. How to address differences between section 6050W reporting and payee reporting on Forms 1040, 1065, or 1120, particularly when timing differences arise, for example, between calendar reporting years and fiscal taxable years, and the potential appropriateness of annual information returns from payment settlement entities that either segregate monthly “gross amounts” or reflect the taxable year of the participating payee; and

10. What document retention and other verification requirements should apply to reporting entities and what information should be captured for purposes of substantiating the payments reported.

Interested parties are invited to submit comments on this notice by Wednesday, March 18, 2009. Written comments should be submitted to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2009-19), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2009-19), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, D.C. Comments may also be transmitted electronically via the following e-mail address: Notice.Comments@irs.counsel.treas.gov. Please include "Notice 2009-19" in the subject line of any electronic communications. All comments will be available for public inspection and copying.

The principal author of this notice is Barbara Pettoni of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, please contact Barbara Pettoni at (202) 622-4910 (not a toll-free call).